



Federal Communications Commission
Washington, D.C. 20554

November 23, 2004

DA 04-3685

Cheryl A. Tritt, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1888

Re: Expedited Clarification of Sections 1.2105(a) and 1.2106(a) of the Commission's Rules

Dear Ms. Tritt:

This letter responds in part to your November 12, 2004, request ("Request") that the Federal Communications Commission clarify that the term "debt" or "non-tax debt," as referenced in Sections 1.2105(a) and 1.2106(a) and Section 1.1910 of the Commission's rules, 47 C.F.R. §§ 1.2105(a), 1.2106(a), and 1.1910, does not include regulatory or application fees owed to the Commission or any other federal agencies. In light of the need for parties to comply with Sections 1.2105(a) and 1.2106(a) in connection with applications to participate in Auction No. 58 that must be filed no later than November 30, 2004, we have expedited this response with respect to Sections 1.2105(a) and 1.2106(a).¹

In brief, the terms "debt" and "non-tax debt" as used in Sections 1.2105(a) and 1.2106(a), include regulatory or application fees owed to the Commission. Such debts are considered delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.² Our clarification in this regard applies only to these auction-related rules, and not to Section 1.1910 and related rules implementing the Debt Collection Improvement Act.

It is generally accepted that the term "non-tax debt" refers to debts other than those arising under the Internal Revenue Code of 1986. *See* 31 U.S.C. § 3701(a)(8). Application and regulatory fees arise under Sections 8 and 9 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 158 and 159, not the Internal Revenue Code. You contend that the definition of "debt" in Section 1.1901(e) of the Commission's rules, 47 C.F.R. § 1.1901(e), does not include regulatory or application fees. In fact, Section 1.1901(e) specifically includes "amounts due to the United States from fees."³ In addition, you

¹ The circumstances described in the Request do not present any need for clarification of Section 1.1910. With respect to the Request's inquiry regarding regulatory or application fees owed to other federal agencies, we will not attempt to address the application of the Commission's rules to such obligations absent more specific information, *e.g.*, the nature of the particular obligations or the policies of the relevant agency.

² With respect to installment payment debt on Commission licenses, the final deadline for purposes of Sections 1.2105(a) and 1.2106(a) is the final payment deadline provided by the Commission's rules, regardless of any pending requests for waiver of such rules or other requests for administrative relief. *See* Letter to Audrey P. Rasmussen, Counsel to Tracy Broadcasting Corp., from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Div., Wireless Telecommunications Bur., DA 04-3065 (Sept. 24, 2004).

³ While the definitions of Section 1.1901 specifically apply only to 47 C.F.R. Part 1, Subpart O, we believe the definitions may be useful when interpreting Sections 1.2105(a) and 1.2106(a), which are contained in Part 1, Subpart Q.

contend that the Commission's separate provisions for the handling of application and regulatory fees indicate an intention to exclude those obligations from the meaning of "debt" or "non-tax debt" in Sections 1.2105(a) and 1.2106(a). We do not believe that the Commission's having separate rules governing application and regulatory fees, on one hand, and competitive bidding, on the other, requires the conclusion that the terms "debt" or "non-tax debt" do not include regulatory or application fees owed to the Commission for purposes of Sections 1.2105(a) or 1.2106(a).

Sections 1.2105(a) and 1.2106(a) apply only when a relevant party is or has been delinquent on a non-tax debt. When particular debts become delinquent for purposes of those rules depends on the circumstances of the debt. For purposes of determining when a debt becomes delinquent under Sections 1.2105(a) and 1.2106(a), we look to the other Commission competitive bidding rules governing delinquencies. For example, the Commission expressly provides that parties paying for licenses won in competitive bidding in installments that pay late but otherwise in accordance with Commission rules regarding late periods for installment payments are not "delinquent" on their installment debt.⁴ By rule, the Commission provides that if late installment payments, together with associated late fees, are not paid within two quarters of the original payment deadline, the licensee shall be in default and subject to debt collection procedures.⁵ Section 1.2105(a) or, in the event the default/delinquency is later resolved, Section 1.2106(a), only will apply at this point. The Commission adopted this approach to provide licensees "adequate financial incentives to make installment payments on time, while at the same time creating increased certainty that will help licensees pursue private market solutions to their financing difficulties."⁶ It would be contrary to the Commission's purpose of "help[ing] licensees pursue private market solutions to their financing difficulties" to treat licensees as "delinquent" for purposes of Sections 1.2105(a) and 1.2106(a).

In order to maintain consistency with the Commission's express treatment of installment payment debt under the competitive bidding rules, we believe that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.⁷ Therefore, we conclude that with respect to regulatory or application fees, the sanctions Sections 1.2105(a) and 1.2106(a) impose with respect to competitive bidding should be limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.

⁴ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15,310 ¶28 (2000) ("[W]e will provide such licensees with two quarters (two 3-month periods) in which to submit their late installment payments and required late fees without being considered delinquent.")

⁵ 47 C.F.R. §1.2110(g)(4)(iv).

⁶ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 439, ¶110 (1997).

⁷ Even where Commission rules expressly enable late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. *See* 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

This action is taken pursuant to authority delegated pursuant to Section 0.331 of the Commission's rules.⁸

Sincerely,

Margaret Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

⁸ 47 C.F.R. § 0.331.